

AMENDED IN SENATE JUNE 27, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1749**

**Introduced by Committee on Governmental Organization  
(Jerome Horton (Chair), Plescia (Vice Chair), Aghazarian,  
Bermudez, Calderon, Chavez, Garcia, Levine, Liu, Torrico, and  
Yee)**

March 9, 2005

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An act to amend Sections 22978.4, 22978.7, 22979.2, ~~and 22979.7~~  
~~22979.7, and 22980.2~~ of the Business and Professions Code, and to  
add Section 30361.5 to the Revenue and Taxation Code, relating to  
cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, as amended, Committee on Governmental Organization.  
Cigarettes and tobacco products.

(1) The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with those licensure requirements.

The act requires each distributor and each wholesaler to include information on each invoice for the sale of cigarettes or tobacco products, including a statement that all California cigarette and tobacco product taxes are included in the total amount of the invoice. The act provides that failure to comply with that requirement constitutes a misdemeanor.

This bill would ~~delete the requirement that provide that a distributor that is also a retailer shall include either the above tax statement be included on each invoice for the sale of cigarettes or tobacco products and would instead require that~~ or the amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products ~~be included on the invoice~~. *In the case of other distributors and wholesalers, this bill would require these parties to include the amount of excise taxes due to the board on these invoices. Additionally, this bill would require a distributor or wholesaler to include the date the cigarettes or tobacco products are sold on each invoice.* By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) The act authorizes the board or a law enforcement agency to seize any cigarettes or tobacco products that do not meet the act's requirements. Upon a finding that any distributor, wholesaler, manufacturer, or importer has violated any provision of the act, the act authorizes the board, upon a first offense, to revoke or suspend the license or licenses of the distributor, wholesaler, manufacturer, or importer, and, upon a second or any subsequent offense, impose a civil penalty in an amount not to exceed the greater of 5 times the retail value of the cigarettes or tobacco products or \$5,000.

This bill would clarify that, upon a 2nd or subsequent offense, the board is authorized to impose a civil penalty in an amount not to exceed the greater of 5 times the retail value of the seized cigarettes or tobacco products or \$5,000.

(3) The act requires all manufacturers and all importers that begin operations in the state after January 1, 2004, to be charged an administration fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer, and sold in this state during the next calendar year as estimated by the board.

This bill would clarify that all manufacturers and all importers that begin operations in the state after January 1, 2004, shall be charged a fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer or importer, and sold in this state during the next calendar year as estimated by the board.

(4) *Existing provisions within the act establish procedures for the seizure of cigarettes and tobacco products from a seller after a notification of suspension or revocation of their license.*

*This bill would specify that the State Board of Equalization or a law enforcement agency is empowered to seize cigarettes and tobacco*

*products from unlicensed persons for the continued sales of cigarettes and tobacco products without a license.*

(4)

(5) The State Board of Equalization administers various tax and fee programs, including the Sales and Use Tax Law and the Cigarette and Tobacco Products Tax Law. The tax and fee programs administered by the board generally require any person who collects tax or fee reimbursement in excess of the amount due to either refund the excess to their customer or remit the excess to the state.

This bill would apply these reimbursement provisions to the taxes imposed under the Cigarette and Tobacco Products Tax Law.

(5)

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22978.4 of the Business and  
2 Professions Code is amended to read:  
3 22978.4. (a) ~~Each~~—*Except as otherwise provided in*  
4 *paragraph (7), each* distributor and each wholesaler shall include  
5 the following information on each invoice for the sale of  
6 cigarettes or tobacco products:  
7 (1) The name, address, and telephone number of the  
8 distributor or wholesaler.  
9 (2) The license number of the distributor or the wholesaler as  
10 provided by the board.  
11 (3) The amount of excise taxes due to the board by the  
12 distributor on the sale of cigarettes and tobacco products.  
13 (4) The name, address, and license number of the retailer,  
14 distributor, or wholesaler to whom cigarettes or tobacco products  
15 are sold.  
16 (5) An itemized listing of the cigarettes or tobacco products  
17 sold.

1     (6) *The date the cigarette or tobacco products are sold.*

2     (7) *Notwithstanding paragraph (3), a distributor that is also a*  
3 *retailer shall include either one of the following on each invoice*  
4 *for the sale of cigarettes or tobacco products:*

5     (A) *A statement that reads: "All California cigarette and*  
6 *tobacco product taxes are included in the total amount of this*  
7 *invoice."*

8     (B) *The amount of excise taxes due to the board by the*  
9 *distributor on the distribution of cigarettes and tobacco products.*

10    (b) Each invoice for the sale of cigarettes or tobacco products  
11 shall be legible and readable.

12    (c) Failure to comply with the requirements of this section  
13 shall be a misdemeanor subject to penalties pursuant to Section  
14 22981.

15    SEC. 2. Section 22978.7 of the Business and Professions  
16 Code is amended to read:

17    22978.7. In addition to any other civil or criminal penalty  
18 provided by law, upon a finding that any distributor or any  
19 wholesaler has violated any provision of this division, the board  
20 may take the following actions:

21    (a) In the case of the first offense, the board may revoke or  
22 suspend the license or licenses of the distributor or the  
23 wholesaler pursuant to the procedures applicable to the  
24 revocation of a license set forth in Section 30148 of the Revenue  
25 and Taxation Code.

26    (b) In the case of a second or any subsequent offense, in  
27 addition to the action authorized under subdivision (a), the board  
28 may impose a civil penalty in an amount not to exceed the  
29 greater of either of the following:

30    (1) Five times the retail value of the seized cigarettes or  
31 tobacco products.

32    (2) Five thousand dollars (\$5,000).

33    SEC. 3. Section 22979.2 of the Business and Professions  
34 Code is amended to read:

35    22979.2. (a) On or before January 1, 2004, every  
36 manufacturer and every importer shall pay to the board an  
37 administration fee. The amount of the administration fee shall be  
38 one cent (\$0.01) per package of cigarettes (1) manufactured or  
39 imported by the manufacturer or the importer and (2) shipped  
40 into this state during the 2001 calendar year as reported to the

1 board. The board shall notify each manufacturer and each  
2 importer of the amount due under this section.

3 (b) This section shall apply to every manufacturer and every  
4 importer required to be licensed pursuant to Section 22979. All  
5 manufacturers and all importers that may become eligible for  
6 licensure on or after December 1, 2003, shall be notified by the  
7 board of the appropriate fee due and shall pay that fee within 90  
8 days of notification.

9 (c) All manufacturers and all importers that begin operations  
10 in the state after enactment of this division shall be charged a fee  
11 commensurate with their respective market share of (1) cigarettes  
12 manufactured or imported by the manufacturer or the importer  
13 and (2) sold in this state during the next calendar year as  
14 estimated by the board. The fee shall be at an amount not less  
15 than that paid pursuant to subdivision (a) by the smallest  
16 manufacturer, but may not be more than that paid by the eighth  
17 largest manufacturer.

18 (d) The board shall administer this fee in accordance with the  
19 Fee Collection Procedures Law, Part 30 (commencing with  
20 Section 55001) of Division 2 of the Revenue and Taxation Code.

21 SEC. 4. Section 22979.7 of the Business and Professions  
22 Code is amended to read:

23 22979.7. In addition to any other civil or criminal penalty  
24 provided by law, upon a finding that a manufacturer or importer  
25 has violated any provision of this division, the board may take  
26 the following actions:

27 (a) In the case of the first offense, the board may revoke or  
28 suspend the license or licenses of the manufacturer or importer  
29 pursuant to the procedures applicable to the revocation of a  
30 license set forth in Section 30148 of the Revenue and Taxation  
31 Code.

32 (b) In the case of a second or any subsequent offense, in  
33 addition to the action authorized under subdivision (a), the board  
34 may impose a civil penalty in an amount not to exceed the  
35 greater of either of the following:

36 (1) Five times the retail value of the seized cigarettes or  
37 tobacco products defined as cigarettes under this section.

38 (2) Five thousand dollars (\$5,000).

39 SEC. 5. Section 22980.2 of the Business and Professions  
40 Code is amended to read:

22980.2. (a) A person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable as provided in Section 22981.

(b) Each day after notification by the board or by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this act offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(c) Continued sales *without a license* or after a notification of suspension or revocation shall constitute a violation of Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

~~SEC. 5.—~~

*SEC. 6.* Section 30361.5 is added to the Revenue and Taxation Code, to read:

30361.5. When an amount represented by a person to a customer as constituting reimbursement for taxes upon the distribution of tobacco products pursuant to this part is computed upon an amount that is not taxable or is in excess of the tax amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or the customer that an excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the tax imposed by this part or that is in excess of the tax amount, shall be remitted by that person to this state. Those amounts remitted to the state by the person shall be credited by the board to any amounts due and payable from that ~~person~~ *customer* that are subject to this part and that are based on the same activity, and the balance, if any, shall constitute an obligation due from the person to this state.

1     ~~SEC. 6.—~~

2     *SEC. 7.* No reimbursement is required by this act pursuant to  
3     Section 6 of Article XIII B of the California Constitution because  
4     the only costs that may be incurred by a local agency or school  
5     district will be incurred because this act creates a new crime or  
6     infraction, eliminates a crime or infraction, or changes the  
7     penalty for a crime or infraction, within the meaning of Section  
8     17556 of the Government Code, or changes the definition of a  
9     crime within the meaning of Section 6 of Article XIII B of the  
10    California Constitution.

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